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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,833	02/05/2004	Mitchell Friedman	45422.17.1	6022

22859 7590 08/09/2006

INTELLECTUAL PROPERTY GROUP
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EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/772,833	FRIEDMAN ET AL.	
	Examiner	Art Unit	
	Robert L. Nasser	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 29-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/12/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

Applicant's election with traverse of Group I in the reply filed on 7/25/2006 is acknowledged. The traversal is on the ground(s) that the groups are sufficiently related to be searched together. Also, applicant noted that both groups are drawn to an automated collection device. This is not found persuasive because group II is not drawn to an automated collection device. Rather, it is merely drawn to the collection vessel, i.e. a sample tube. The search for group I is far broader than the search for group I. Hence, restriction is deemed proper.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10, 12-16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Giron et al 2005/0177056. Giron shows an automated breath collection device including a breath inlet 30, a breath collection vessel 24, and a controller 14 for automatically directing breath to the collection device. It does not say whether controller is an microprocessor. The examiner takes official notice that it is well known to use a microprocessor as a controller. Hence, it would have been obvious to modify Giron to use a microprocessor, as it is merely the use of a well known element for the task. Claim 2 is rejected in that the device is capable of being moved. Hence it is

portable. Claim 3 is rejected in that there is a valve 23 associated with the vessel.

Claim 4 is rejected in that there is a valve manifold 20. Claim 5 is rejected in that there are a plurality of collection vessels 24 connected to the manifold. Claims 6 and 7 are rejected in that there is a speaker for outputting an audible signal 32 (paragraph [0078]) for prompting the user when to breath. Claim 10 is rejected in that the sampling device is a nasal cannula. Claims 12-13 and 16 are rejected for the reasons given above.

Claim 14 is rejected in that in addition to a plurality of vessels 24, there are a plurality of valves 23. Claim 15 is rejected in that the processor is capable of directing the breath to different collection vessels in any order, including sequentially. Claim 19 is rejected in that Giron also teaches the method.

Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giron et al in view of Peddicord et al 6402691. Peddicord teaches that it is well known to guide a user on how to use a monitoring device by providing voice messages from the device (see column 3, lines 15-20). Hence, it would have been obvious to modify Giron to provide voice instructions, to ensure proper use of the device.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giron et al in view of Alving et al 6723056. Alving further teaches that It is well known to collect breath samples with a mask. Hence, it would have been obvious to modify Giron to use a mask, as it is merely the substitution of one known equivalent collection means for another.

Claims 11 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giron et al in view of Risby et al 6248078. Risby et al further teaches that it is well

known to clean the sampling system with nitrogen after each use (see column 19, line 17). This cleaning would prevent contamination of future samples. Hence, it would have been obvious to modify Giron to provide a nitrogen source for cleaning and to clean the device after each use, to prevent contamination of the sample.

Claims 17 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giron et al in view of Djupesland et al 2004/0024330. Giron does not have the cartridge. Djupesland et al teaches a cartridge for taking multiple samples (see figure 10). As such, it would have been obvious to modify Giron to use such a sample collector, as it is merely the substitution of one known sample collector for another.

Claims 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giron et al in view of Williams et al 6350412. Williams is selected from a myriad of references which teach that it is well known to put a code on the sample collection device in indicate to the device what tests are to be performed. Hence, it would have been obvious to modify Giron to use such a code, to ensure proper sample collection.

Claims 28 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Giron et al in view Djupesland et al as applied to claims 17 and 24-26 above, further in view of Peddicord et al 6402691. Peddicord teaches that it is well known to guide a user on how to use a monitoring device by providing voice messages from the device (see column 3, lines 15-20). Hence, it would have been obvious to modify Giron to provide voice instructions, to ensure proper use of the device.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

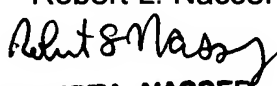
Gonner et al shows another automated sample collection device.

Lin et al 6712770 shows another device that cleans the sample chamber with nitrogen before each use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert L. Nasser

ROBERT L. NASSER
PRIMARY EXAMINER

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Primary Examiner
Art Unit 3735

RLN
August 2, 2006